PUBLIC VERSION

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Worldcall Interconnect, Inc.	)	Proceeding No. 14-221
a/k/a Evolve Broadband,	)	Bureau ID No. EB-14-MD-011
	)	
Complainant,	)	
	)	
v.	)	
	)	
AT&T Mobility, LLC,	)	
	)	
Defendant.	)	

REPLY IN SUPPORT OF THE APPLICATION FOR REVIEW OF WORLDCALL INTERCONNECT

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Pursuant to 47 C.F.R. §§ 1.115 and 1.4, Worldcall Interconnect, Inc. ("WCX") respectfully submits this reply to the Opposition of AT&T Mobility, LLC ("AT&T") of WCX's application for review filed on October 24, 2016.[1]

I. Introduction

The Commission should be deeply troubled by the Enforcement Bureau's *Order*. The Bureau has deemed AT&T's LTE networks exempt from the automatic roaming rule and Title II, even when used to originate or terminate calls, despite the *Data Roaming Order's* express preservation of automatic roaming.

The Bureau compounded this error by holding that AT&T's existing roaming agreements are the benchmark for commercial reasonableness and presumptively commercially reasonable. Yet many of these agreements led the Commission to issue the *Data Roaming Order* in the first place. The *Order* ratifies the conduct the Commission sought to eliminate and as a result effectively kills both automatic roaming and the *Data Roaming Order* for AT&T's LTE network.

II. Section 20.12(d) applies when roamers are "able to originate or terminate a call."

AT&T contends that it does not provide the public switched interconnection with LTE roaming so it will never provide automatic roaming.[2] But that is not how the rules work. AT&T must offer both roaming types because AT&T offers the retail services described in Section 20.12(a)(2) and (a)(3) on its LTE network. But the *type* of *roaming* involved on a call-by-call basis

[1] Although not pertinent to the issues on review, AT&T Oppos. p. 8, n. 45 complains about WCX's decision to not challenge the Bureau's ruling on "scope." It is true that AT&T's terms always contemplated that WCX could add new facilities-based markets and obtain authorized roamer status for those customers. The dispute concerned whether WCX could use unlicensed and light-licensed spectrum. That issue was resolved during briefing on WCX's Motion for Clarification. [redacted] Once AT&T made this interpretive concession WCX was able to agree to the relevant terms, so construed.

[2] AT&T Oppos. pp. 10-12.

does not turn on whether AT&T provides the legacy public switched network interconnection. When "a roaming subscriber is *able to* originate or terminate a call" AT&T is hosting "automatic roaming"[3] regardless of whether AT&T provides the interconnection.[4]

It also does not matter that WCX does not need AT&T's "VoLTE roaming service."[5] AT&T activities do not vary and AT&T will not know what the user is doing.[6] Different wholesale standards often apply depending on the retail classification, even if the functionality provided by the wholesale provider is the same and the wholesale provider cannot independently discern the retail classification. Consider transport and termination. A "local call" is non-access,[7] but a "non-local" call is access, even when IP networks[8] are involved[9] or the wholesaler does not know the retail service type. The wholesale input is nonetheless classified based on retail use.[10]

AT&T must host Section 20.12(d) automatic roaming with just and reasonable terms, conditions and prices so roamers are "able to originate or terminate a call." WCX can and will supply the interconnection and the VoLTE capability. But it is still automatic roaming.[11]

The Bureau refused to apply the automatic roaming rule even though there is no dispute that roamers will be "able originate or terminate a call" on AT&T's LTE network. It did not decide

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[3] *See* Section 20.3 definitions of "automatic roaming" and "host carrier." (emphasis added). The key is what the user is "able to" do, not which carrier provides the interconnection.

[4] If AT&T is correct that it must be the one that supplies the interconnection, then its refusal to do so with LTE leads to a direct violation of the mandate in Section 20.12(a)(2) and (d) that AT&T support automatic roaming.

[5] AT&T Oppos. pp. 2, 11-13. WCX will provide the VoLTE based interconnected voice capability using its own LTE core facilities and does not need "VoLTE roaming service" from AT&T to do so. The user will then be able to originate and terminate calls, so it is automatic roaming, not roaming for commercial mobile data service.

[6] *Id.* AT&T's decision to not support Service Aware Roaming does not change the regulatory classification because roamers can still originate or terminate a call.

[7] *See* 47 C.F.R. §§ 51.700 and 51.701 (covering "non-access" traffic) in Subpart H. The basic rule is the same for CMRS traffic. *See* 47 C.F.R. § 51.701(b)(1) and (2).

[8] 47 C.F.R. § 51.701(b)(3).

[9] *See* 47 C.F.R. § 51.901 (covering "access" traffic) in Subpart J.

[10] A different regime applies to LEC retail local and toll services, which use the same functions.

[11] WCX chose to not further burden the Commission's and parties' resources with a challenge to AT&T's GSM related automatic roaming prices since WCX will not much use GSM roaming. But that does not lead to a waiver of WCX's right to complain about AT&T's LTE related automatic roaming terms, conditions and prices. Application for Review pp. 12, 24. *Cf.* AT&T Oppos. pp. 13, 24.

whether AT&T's automatic roaming related terms, conditions and prices meet the just and reasonable standard.[12] The Commission should hold that the automatic roaming rule applies when roamers are "able to originate or terminate a call" and remand with instructions that the Bureau apply and enforce the automatic roaming rule.

III. The *Order* erred by excluding relevant evidence of the commercial unreasonableness of AT&Ts proposed rates and relying on AT&T's flawed evidence.

The *Order* further erred in its application of the commercial mobile data roaming rule to AT&T's proposed rates. It is important to remember that the *Data Roaming Order* would not exist but for AT&T's past refusals to provide data roaming on commercially reasonable terms and rates. Holding that AT&T's current proposed rates are commercially reasonable solely because they are consistent with its past agreements functionally reverses the *Data Roaming Order* because it ratifies the very behavior the Commission was trying to stop.

AT&T's response praises the *Order's* holding that WCX's roaming agreement with [redacted] is irrelevant to the commercial reasonableness of AT&T's far higher rates.[13] The Bureau reasoned that AT&T's rates should be much higher because AT&T has a larger and therefore superior network.[14] AT&T predictably approves of this theory[15] because it overturns the guidance that "other carriers'" rates should inform commercial reasonableness determinations.[16] The Bureau is wrong. This roaming agreement is the best evidence of commercial unreasonableness. The Commission has never accepted that roaming rates increase with network size, particularly when it was the two largest

[12] WCX asserts the same per-MB price should be used, but that does not absolve the Bureau from subjecting AT&T's terms, conditions and prices to the correct legal standard.
[13] AT&T Oppos. pp. 16-17.
[14] *Order* ¶ 25.
[15] AT&T Oppos. pp. 16-17.
[16] *T-Mobile Declaratory Ruling* ¶ 9.

wireless carriers the Commission found most problematic.

The refusal to consider WCX's copious evidence that AT&T's rates substantially exceed retail and international rates[17] was also improper. The *Order* discards all of it in a footnote saying WCX did not submit "a systematic review" of international roaming rates or an analysis of all of AT&T's retail rates.[18] In other words, the Bureau rejected WCX's evidence because it was allegedly not comprehensive. The Commission has correctly recognized that this type of comprehensive review is nearly impossible, so the *Order* essentially imposed an insurmountable burden of proof.[19] The Bureau erred by shutting its eyes to relevant information.[20]

Only by discarding all of WCX's evidence could the *Order* find that WCX did not carry its burden of proof regarding commercial unreasonableness.[21] AT&T's expert reports were the only data the Bureau had left.[22] But AT&T's analysis should have been rejected because it is based solely on a self-serving comparison of its "effective data rate" to a cherry picked collection of its roaming agreements. This is not the "expansive approach" based on the "totality of the circumstances" that should have been used.[23]

The *Order's* error is most apparent in light of the Commission's own calculations of the prevailing retail data rates.[24] Even though the *Order* itself cited one of them,[25] AT&T objects to

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[17] *Id.*
[18] *Order* n. 79.
[19] *Eighteenth CMRS Report* ¶ 26 and n. 54.
[20] *T-Mobile Declaratory Ruling* ¶ 15 ("This language clearly reflects a broad view of what could be relevant in determining commercial reasonableness, and a determination not to circumscribe the Commission's consideration of potentially relevant factors.").
[21] *Order* ¶ 23 ("In the absence of other probative evidence, we find that the data roaming rates in the roaming agreements that AT&T has submitted in the proceeding, including the related analyses of AT&T's experts, are highly probative of the commercial reasonableness of AT&T's proposed data roaming rates.").
[22] *Id.*
[23] *T-Mobile Declaratory Ruling* ¶¶ 14 and 16.
[24] Application for Review pp. 19-21.
[25] *Order* p. 8, n. 45.

WCX's citation to recent annual reports in an effort to have the Commission ignore its own data.[26] These are Commission reports, so they do not have to be introduced into evidence. WCX did not introduce new "questions" of fact. AT&T does not dispute the Commission's conclusions; indeed AT&T relies on some of them as well.[27]

Most tellingly, AT&T failed to address WCX's point that the *Order* validates the very roaming agreements that necessitated the *Data Roaming Order* – which was adopted to allow small providers to compete in the nationwide market.[28] The Commission singled out AT&T and these roaming agreements as the reason for creating the rule, so they cannot now be the basis for finding commercial reasonableness. The *Order* embraces what the *Data Roaming Order* itself rejected.

IV. CONCLUSION

WCX respectfully requests that the Commission reverse the *Order* and remand the complaint for adjudication under the automatic roaming rule for WCX's interconnected services and with the instruction that all relevant evidence of commercial reasonableness be considered for WCX's commercial mobile data services.

Respectfully submitted,

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[26] AT&T Oppos. pp. 19-20.
[27] *Id.*
[28] AT&T never addresses WCX's point that it cannot offer a competitive nationwide Internet access service if it must pay AT&T for more for each user's roaming usage on AT&T's network than it can charge that user at retail for a complete service, including the much greater amount of primary usage that will still occur on WCX's own access network. Application for Review, pp. 22-23, 24.